

ANGLICAN/ROMAN CATHOLIC INTERNATIONAL COMMISSION

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THE RELATIONS OF MEN AND WOMEN

An Anglican view, as seen from  
within the Church of England

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1. The title given me for this paper is so wide that severe limitation of treatment will be necessary. It could invite an empirical treatment - an attempted description of how the Christian faith and life are interpreted and actually expressed in the relations of men and women within our community; and no doubt a sense of "style" could be conveyed this way by a gifted descriptive writer - by an Izaak Walton, a Charlotte M. Yonge, an Anthony Trollope, or a Charles Williams or C.S. Lewis of this generation. I am not he. The same task could be assayed by a contemporary sociologist, after several years of sampling and surveys, questionnaires, computer cards and all the apparatus of present-day research. We are discouraged from thanking God that we are not as other men are; I say no more, therefore, than that neither am I he. It is doubtful, furthermore, whether such a description would advance very far the work of the International Commission. What I think is called for is an exploration of teaching and - so far as it is known - pastoral practice in those areas of concern where historically there have been differences, whether of emphasis or of direction, and where there may or may not be convergence today. Such areas include the status of and value put upon the family; the theology and norms of marriage; divorce; the value of sexuality and the modes of its expression; contraception and other topics related to fertility; the authority of the Church over conscience, or its claims upon it, in such matters; and the pastoral opportunities of the Church. Even this is an ambitious programme, parts of which have been touched upon in my earlier paper for the Commission, and in recent papers written for other purposes. I shall ask leave, therefore, to build up a substantial part of this paper by reference to or incorporation from those.

I

THE FAMILY

2. The order in the sequence of subjects listed above will be noted: first the family, then marriage, then sexuality. This is a deliberate departure from the order found in academic syllabuses - "sex, marriage and the family". It reflects the recognition given to the primacy of social units for characteristically human relations which distinguished the preparatory work for the Lambeth Conference of 1958, and the Resolutions and Reports of the Conference itself. "Society" is as "natural" to man as biological endowment. So the Conference prefaced its Resolutions on marriage and contraception with one on the family:

112. The Conference records its profound conviction that the idea of the human family is rooted in the Godhead and that consequently all problems of sex relations, the procreation of children, and the organization of family life must be related, consciously and directly, to the creative, redemptive, and sanctifying power of God.

It related its Resolution (115) on contraception to social and demographic problems, though, properly, it did not ground its judgment upon them. The same new understanding of social and economic factors was reflected in the Conference's Resolution on polygamy - a subject which had exercised Lambeth Conferences from the first:

1958

120.(a) The Conference bears witness to the truth that monogamy is the Divine will, testified by the teaching of Christ himself, and therefore true for every race of men.

(b) It acknowledges that the introduction of monogamy into societies that practise polygamy involves a social and economic revolution and raises problems which the Christian Church has as yet not solved.

(c) The Conference urges upon Church members the continuance of thorough study and earnest prayer that God may lead his Church to know the manner of its witness and discipline in this issue.

(d) The Conference, recognizing that the problem of polygamy is bound up with the limitation of opportunities for women in society, urges that the Church should make every effort to advance the status of women in every possible way, especially in the sphere of education.

(e) The Conference further requests his Grace the President to refer this problem to the Advisory Council on Missionary Strategy.

Four Resolutions, 121 - 124, which followed on "The Christian Family" were harmless, and designed to encourage internal stability and growth, and an intelligent concern for families at risk or in any way deprived. The subject has not engaged official attention in the following years; but in 1962 alarmist cries about "the breakdown of family life" moved the present writer to publish The Family is Not Broken, primarily an examination of the sociological evidence concerning the state of family life in Britain, but containing theological reflections relevant, it is hoped, to the theme.

3. Since then, of course, pressure to remove sexual expression out of the traditional institutions of marriage and the family has gathered strength. It appears to have invited no such thorough theological investigation in Britain as it has been given in Europe if we may judge by such recent writing as the Documentation on "The Humanization of Sexuality" in Concilium, May, 1970, and the whole number of Lumière et Vie for March - May 1970. Nevertheless, two competent papers are to be mentioned, both presented as Open Lectures in the Faculty of Divinity at Cambridge before audiences predominantly of undergraduates, with an interval of six years between them. The first is by H.W. Montefiore (now Bishop Suffragan Designate of Kingston), entitled "Personal Relations before Marriage".<sup>1</sup> The second is by J.W. Bowker, entitled "The Morality of Personal Relationships".<sup>2</sup> In both "the traditional Christian view that

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1. In God, Sex and War, ed. D.M. MacKinnon. 1963.

2. In Making Moral Decisions, ed., D.M. MacKinnon, 1969.

sexual intercourse should be confined within marriage" is examined and, in effect, commended, though "not in virtue of the authority of a revealed law, but from the viewpoint of reasoned argument".<sup>3</sup> Bowker adds to this the force of a sensitive appeal to human courtesy, fortified from an essentially Christological resource.

## II

4. On recent developments in the theology of marriage I offer the following survey, written for Concilium, and published in that journal in May, 1970.

### THE DEVELOPMENT OF THE THEOLOGY OF MARRIAGE IN THE CHURCHES OF THE ANGLICAN COMMUNION

5. It is hard indeed to speak of any "development" in pure theology in relation to marriage in the Anglican Churches today. There is widespread concern with institutional and practical questions concerning marriage - in particular the remarriage of the divorced and mixed marriages - and no doubt the theology of marriage is being probed in the attempt to find solutions to these questions; but of theological initiative there appears to be very little.

## I

6. The last major theological contribution came from the work of Revd. Dr. D. Sherwin Bailey, then assigned a research and teaching position on the staff of the Church of England Moral Welfare Council (a department of the National Assembly of the Established Church), and now Precentor of Wells Cathedral. His first, exploratory, study was The Mystery of Love and Marriage, significantly sub-titled "A Study in the Theology of Sexual Relation".<sup>4</sup> With insight, sensitivity and courage, Bailey explored the meaning of sexual love and of the union "in one flesh". The foundations of his theology of marriage were two: we may call them the myth in the Word, and the experience in the flesh. The myth he developed from the Genesis story, playing, in familiar fashion, on a literal construction of the Hebrew. The image of the triune God is to be sought in human beings in relation, in the sexual bi-unity of man and woman together. As man "knows" himself only when he "knows" God, so a man "knows" himself when he "knows" his wife; carnal knowledge, in the lawyer's phrase, is the key to essential human knowledge, and the ground of the unity, the henosis, which is marriage. The book was avowedly exploratory; there were confusions inevitable in a pioneer work. But our theology of marriage, and of much else, still lives by the impetus which it gave.
7. In the midst of much teaching and occasional writing, Bailey developed his thought further in two major studies, Homosexuality and the Western Christian Tradition<sup>5</sup> and The Man-Woman Relation in Christian Thought.<sup>6</sup> In each the pattern was the same: an historical exploration, from the Bible, through

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3. Montefiore, op. cit., p.98. But see also the reference above to the forward looking work of D.S. Bailey.

4. London, 1952.

5. London, 1955.

6. London, 1959.

the patristic and medieval periods, to the Anglican tradition; then a sketch of a theological interpretation bearing on the pressing problems of the day - problems of which he was actively aware as a pastor, and as a member of a small team of men and women engaged in formulating the contribution of the Church of England to the legislative processes of the English nation. Fundamentally, Bailey's position did not change: his final chapter was entitled "Towards a Theology of Sex", not of marriage: marriage is a product of the sexual relation, one institutional expression of it; marriage could not be understood except within the wider whole.

8. Bailey's position invited criticism, though it was widely accepted, developed and sometimes admiringly distorted in both England and the U.S.A. The present writer, though a disciple, friend and colleague of Bailey, criticized his two main foundations. In The Marriage Covenant,<sup>7</sup> I sought to ground marriage again in the consent, the purposeful commitment, of the spouses, retaining the sexual union as the consummation of that union, not its ground; I distinguished the covenantal view of marriage from a "low" contractual interpretation, and from a "high" doctrine, resting on the Genesis myth. Then, in an exposition of the notoriously difficult text, I Cor.6.16<sup>8</sup> I denied that in biblical usage the phrase "one flesh" carries the sexual overtones now imposed upon it. Rather, "it meant to the Jew very much what being 'one body' with Christ means to the Christian, namely, membership of a kinship group bound together by the strongest sense of mutual obligation" (see Judges 9. 2; 2 Sam. 5. 1). "It is more like the English common law concept of 'one person' to describe the man-wife : solidarity."<sup>9</sup> This attempt, for what it is worth, to re-assert the primacy of consensus over concubitus, while in no way under-valuing the sexual endorsement in marriage, may be found, first, to allow for the potential completeness of the unmarried life more than the "one-flesh" school allows (which appeared to restrict the "image of God" to the married); and secondly, in its covenantal emphasis, to offer more ground for ecumenical accord, embracing Catholics, Orthodox, Anglicans, Protestants and the Reformed - an accord highly desirable as a preliminary to progress with the problems of mixed marriages.<sup>10</sup>

9. It was found to have its use, also, in the working out of a theology of marriage among African Christians keenly aware of - and, indeed, sensitive to - their own tribal traditions, anthropological and religious; whether (as was general) the marriage was arranged by the families concerned, or (as is becoming possible in a more mobile society) was a matter of

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7. By G.R. Dunstan. London, 1961.

8. "What? know ye not that he which is joined to an harlot is one body? for two, saith he, shall be one flesh."

9. G.R. Dunstan, "Hard Sayings - V", in Theology, LXVI (December 1963), p. 491.

10. See, e.g., "Marriage and the Division among the Churches", in Study Encounter, III, 1 (1967), p.2; a document used to initiate conversations between the W.C.C. and the Vatican, and so between the Vatican and some major non-Roman Churches. See also Theology, LXX (June 1967), pp. 241 ff., a special number devoted to mixed marriages.

choice between the parties, consent was of the essence of it - and this without any puritanical or dualistic under-valuation of the sexual life. Even the two stages of traditional Western medieval practice, the sponsalia per verba de futuro and the ratification and solemnization per verba de presenti, were recognized as a ground for combining some of the house-centred traditional African customs in marriage with the church-centred solemnities universal, in variant forms, in modern Christian practice.<sup>11</sup>

10. No doctrine of marriage, if it is to correspond to experience, will allow consensus and concubitus to be set at opposite poles, or to be isolated and exalted one against the other. Tendencies to do this have constantly to be corrected from the tradition. So G.W. Ashby, in a recent essay, has expounded Theodoret of Cyrillus on marriage, emphasizing how he incorporated into the Greek patristic tradition the Old Testament and Hebraic understanding of the personal, the flesh-and-blood, and of God's creative act in the marriage of man and woman.<sup>12</sup>

## II

11. Touching both the writing of pure theology and the wrestling with the institutional problems of marriage and divorce, stands the work of an Oxford philosopher, Helen Oppenheimer. In a recent article, entitled "Marriage and Grace",<sup>13</sup> Lady Oppenheimer considers marriage in the light of her earlier, more general, studies of immanence and the unity in plurality which is at the heart of Christian theology. In marriage - not specifically "Christian" marriage, but "the ordinary, human, secular phenomenon" - she finds an "immanence" which "can help to explain - or, on the other hand, can be illuminated by - our concept of God". Her earlier publications include two short but important books on Christian ethics and moral theology,<sup>14</sup> and in these, particularly in the first, Law and Love, she uses the model of "happy family life" (handling it with more than ordinary competence, precision and penetration) to illuminate the relation of the gospel precepts to a morality of laws, rights and duties.

The Christian Gospel, if I understand it rightly, is the good news that what is natural but partial in our families can become universal, that through God's act human beings have been reinstated as God's children and can achieve the spirit of love through which they can transcend law. To treat Christianity as if it were itself a new law to be obeyed instead of a new system of personal relationships to be entered into is, as it were, to sidetrack the Holy Spirit.<sup>15</sup>

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11. See Report of the All-Africa Seminar on the Christian Home and Family Life: Rapport sur le Séminaire Panafricain sur Le Foyer Chrétien et la Vie de Famille (Geneva, 1963).

12. G.W. Ashby, "Theodoret of Cyrillus on Marriage", in Theology, LXXII (November 1969), p. 402.

13. Theology, LXXII (December 1969), p. 535.

14. Helen Oppenheimer, Law and Love (London, 1962) and The Character of Christian Morality (London, 1955).

15. Law and Love, p. 30.

Elsewhere in the book the model is applied more widely, to deepen understanding of judgment, heaven and hell. Immediately, however, it is applied to the Church problem of divorce and remarriage. As, in the family, life is underpinned with rights and obligations but, when true to itself, rides above them, so in modern society divorce and remarriage remain a right conferred by the civil authority which the Christian, like any other citizen, may claim - but not as a Christian. The plain sayings of our Lord upon marriage and divorce are not to be minimized or interpreted away; they are to be taken as all of one piece with their context in the Sermon on the Mount, and so to be read, not as laws capable of juridical trial and enforcement, but as qualities which will appear in authentic Christian living; and so essential are they to Christian living that to ignore or defy them cannot be described as Christian acts, cannot be expected of a faithfully Christian Church.

Whatever interpretation we give to Christ's teaching on divorce must also be capable of covering his teaching on anger, lust and going to law.

Therefore,

while not judging other people, the Christian will always tend to reject remarriage after divorce for himself.

*Handwritten:*  
The man who has remarried after divorce is like a man who has successfully sued his enemy for damages. The one has not necessarily been lustful in the ordinary sense any more than the other has necessarily been vindictive, but neither has acted in the Christian spirit.

The practice of the Church of England in admitting such remarried person to the Holy Communion - preferring admission as a means of grace to exclusion as a penal instrument - is, accordingly, defended; but remarriage or a service of blessing in church is excluded:

It is not legalism to say that the Church can hardly give its formal blessing to people when they are actually doing what Christ particularly wished them not to do.

In return,

the Church should recognize, fully and not grudgingly, the validity of a civil marriage after a civil divorce, just as it recognizes the validity of a civil lawsuit to redress a wrong.

Legally speaking (and at once the discussion passes outside the realm of Christian discourse), it is possible to be absolved from vows, even to God, and people can be released from marriages, so far as their legal and moral status is concerned.

Whether or not they have broken their faith with God is for God only to judge; but to refuse them Communion is to deny the ordinary means for sinners to approach God and restore broken faith.<sup>16</sup>

12. Canon Hugh Montefiore, in a recent pamphlet,<sup>17</sup> argues to different conclusions. He is certain that Jesus did not legislate, but he falls far short of Lady Oppenheimer in the sense of the obligation that, in a Christian community, the words of Christ should be fulfilled. His argument is largely empirical, and to choose one epigram is not to sample it unfairly:

If it is better to marry than to burn, it is better to remarry than to burn.

Therefore he would suggest that, in suitable cases,

remarriage be permitted in England's parish churches, using the same service as we have now, with a prayer added admitting failure in the past, praying for forgiveness, and asking for future blessing.<sup>18</sup>

13. Both writers, Lady Oppenheimer and Canon Montefiore, serve on a Commission appointed by the Archbishop of Canterbury to report on the Christian doctrine of marriage, with obvious, though implicit, reference to the further problems of divorce and remarriage. The Church of England has lived for four hundred years with this problem and it is unlikely that this Commission will solve it. At the Reformation it inherited from the medieval Western Church the strictest possible doctrine of the indissolubility of a marriage validly celebrated between two baptized Christians and consummated; it also denied itself the benefit of most of that elaborate system of safety-valves, the practice of nullification based on wide-ranging degrees of kindred and spiritual affinity within which marriage was forbidden, which had been used to mitigate the rigour of that doctrine in practice. Consequently its canon law forbade divortium a vinculo; the most its canon law has ever permitted was separation a thoro et mensa, with a caution against remarriage during the lifetime of the separated spouse; and since 1969, after two decades of experiment, the reading of a private service in church after civil marriage before the registrar.<sup>19</sup>

At the Reformation the ecclesiastical jurisdiction had been merged with the other courts of law under the supreme headship of the Sovereign, though the jurisdiction itself remained distinct, with its own procedures and practitioners. Jurisdiction over marriage remained part of the ecclesiastical jurisdiction until 1857; until that year divorce, in the modern sense, with liberty to remarry, was theoretically forbidden throughout England and Wales. In fact, there was an escape route for the very wealthy, by means of a series of legal actions culminating in a private Act of Parliament which in effect dispensed the petitioner from the prohibition of remarriage after a decree of separation in the ecclesiastical court; there were 317 such Acts passed between 1697 and 1855. Then by the first Matrimonial Causes Act, 1857, matrimonial jurisdiction was transferred from the ecclesiastical court to a new division of the High Court, and divorce with liberty to remarry became

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17. Remarriage and Mixed Marriage: A Plea for Dual Reform (London, 1967). (Canon Montefiore is now Bishop Designate of Kingston upon Thames.)
18. Op. cit., pp. 13, 17.
19. Constitutions and Canons Ecclesiastical, 1604, ed. J.V. Bullard (London, 1934), c. CVII. The Canons of the Church of England (London, 1969), cc. B 30-36.

permissible, on grounds which have widened steadily as the internal logic of divorce took over from the logic of total prohibition. The ground of divorce was the matrimonial offence, taken over from the old ecclesiastical law; but even this, at the time of writing, will almost certainly soon be abolished, and the breakdown of marriage substituted for it. The change was enacted in the Divorce Reform Act, 1969, which comes into force on 1 January, 1971.

15. So much for the law: an early total prohibition of divorce, soon mitigated by a dispensing power assumed by the High Court of Parliament; then an extending permission of divorce, steadily accepted throughout all ranks of society as social and economic changes (including legal aid - financial help from the State) made it possible for even the poorest to act upon it. Theology, however, did not always go along with law. From the very beginning of the Reformation of England there have flowed two theological traditions, both of which are still represented in Anglican thought today. While the canon law, and the practice of the courts, still forbade divorce a vinculo there were theologians who would have permitted, theologically, remarriage after divorce on the ground of the Matthaean exception, and some on the ground of desertion as well, had the law allowed it. On the other hand there were theologians who retained an indissolubilist view, both then and since, and throughout the last century when divorce had become a civil liberty widely accepted.

16. Both traditions co-existed and co-exist. Their history has been traced by Revd. Dr. A.R. Winnett in Divorce and Remarriage in Anglicanism.<sup>20</sup> The rising number of divorces which began with the beginning of the twentieth century, coming at a time of quickened self-consciousness in the Church as a body set against the State, and creating widespread alarm for the institution of marriage itself, won over much support for the indissolubilist view; so much so that by means of Resolutions in the Convocations of Canterbury and York, and in successive Lambeth Conferences, the indissolubilist view had become, by mid-century, the "official" view of the Church of England in particular, and of the Anglican Communion in general, leaving clergymen who exercised their undoubted legal right to solemnize the marriage of divorced persons with a sense of having offended morally against the mind and express judgment of the Church. Dr. Winnett, in the final chapter of his book, abandoned the position of academic detachment held in its earlier chapters, and embraced the indissolubilist cause - though without convincing argument why he should have chosen that side rather than the other.

17. This position is now again under widespread and searching questioning. Dr. Winnett has himself repudiated it in a new book, The Church and Divorce: A Factual Survey.<sup>21</sup> The main part of the book is indeed a factual survey of developments in the decade since his first book was published, developments in theology, Anglican, Roman Catholic and other, and developments in practice, particularly in provinces of the Anglican Communion outside of England. The book is documented with the Resolutions of successive Lambeth Conferences and Convocations. It contains also comprehensive extracts from Canon XXVII, 1967, of the Canadian Church which, inter alia, defines conditions under which divorced persons may be remarried in church during

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20. London, 1958.

21. London, 1968. It was reviewed, with current Roman Catholic literature, by the present writer in an editorial article in Theology, LXXI (September 1968), p. 385.



the lifetime of the former spouse, and procedures to be followed to this end. A Commission, to be set up under the Canon, has to be satisfied that nine conditions have been met before it may authorize the marriage in church; the last of them is that

The applicants understand the Christian Doctrine of Marriage as defined in this Canon, and intend to enter into such a marriage, and believe on reasonable grounds that they have the capacity to enter into and sustain the marriage during their joint lives.<sup>22</sup>

The emphasis on intention will be noted, with the presumption that this right intention is not frustrated ab initio by any ligamen from the past. The definition of marriage, referred to in this condition, is made in an extended Preface to the Canon, which also contains "built-in" provision for this particular exercise of the ecclesiastical jurisdiction:

1. The Anglican Church of Canada affirms, according to our Lord's teaching as found in Holy Scripture and expressed in the Form of Solemnization of Matrimony in the Book of Common Prayer, that marriage is a lifelong union in faithful love, for better or for worse, to the exclusion of all others on either side. This union is established by God's grace when two duly qualified persons enter into a contract of marriage in which they declare their intention of fulfilling its purposes and exchange vows to be faithful to one another until they are separated by death. The purposes of marriage are mutual fellowship, support and comfort, the procreation (if it may be) and nurture of children, and the creation of a relationship in which sexuality may serve personal fulfilment in a community of faithful love. This contract is made in the sight of God and in the presence of witnesses and of an authorized minister.

3. The Church throughout her history has recognized that not all marriages in human society conform, or are intended to conform, to the standard here described. For this reason, in the exercise of pastoral care as evidenced in the earliest documents of the New Testament, the Church has from the beginning made regulations for the support of family life especially among her own members.

4. Aspects of the regulation of marriage in the apostolic Church are recorded in the New Testament... In Christ's name separated spouses were encouraged to seek reconciliation (1 Cor. 7. 10 f.). In his name also divorce was forbidden though not without exception (Matt. 5. 31 f.; Mark 10. 2-9; cf. Mal. 2. 13-16). In certain circumstances a believer already married to an unbeliever might be declared free from such a marriage bond (1 Cor. 7. 12-16); in others, and here in the name of Christ, remarriage during the lifetime of a former spouse was described, with one exception, as an adulterous union (Matt. 19. 9; Mark 10. 11 f.; Luke 16. 18; cf. Rom. 7.3).

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22. Quoted in Winnett, op. cit., p. 52.

5. From these principles and precedents the Church... has sought in her rites and Canons to uphold and maintain the Christian standard of marriage in the societies in which believers dwell. This standard and these rites and Canons pertain to... the reconciliation of alienated spouses, and to the dissolution of marriage and its consequences.<sup>23</sup>

18. This model is undoubtedly being studied in other parts of the Anglican Communion, notably in Australia and in England. Even an unofficial, though powerful, body like the Mothers' Union, whose interpretation of its stated aim "to uphold the sanctity of marriage" is in fact expressed by excluding from membership, not only unmarried mothers, but also any woman who has been a party to divorce proceedings, whether as petitioner or respondent, is now deeply divided about its policy; its New Zealand branch has already departed from it, and in England it has set up a committee, chaired by the Suffragan Bishop of Willesden, to advise on the question.

19. The Church of England is in a position of peculiar difficulty. It has not only the double tradition among its theologians, to which reference has been made; it has not only a civil law which leaves to the parish priest a discretion whether or not to marry divorced persons in his church, and a policy, formulated by the Convocations and supported by the bishops, requiring him to exercise that discretion negatively; it has also committed itself to the reform of the secular law of divorce, and to replacing the matrimonial offence by "the breakdown of marriage". It has come into this position through the work of a Group appointed by the Archbishop of Canterbury, and chaired by the distinguished moral theologian, Dr. R.C. Mortimer, Bishop of Exeter.<sup>24</sup> The terms of reference given to the Group recognized "that there is a difference in the attitudes of the Church and State towards the further marriage of a divorced person whose former partner is living"; this distinction was emphasized passim in the Report, and particularly in a whole chapter devoted to "The Church's Concern with Secular Matrimonial Law"; and the Archbishop of Canterbury in a Preface to the published Report, wrote:

If there were to be legislation on the lines of what is suggested in this Report, I believe that the Churches would still maintain their own pastoral discipline.

Nevertheless, many commentators have argued that the Church of England cannot consistently favour dissolution on the ground of "breakdown" by the civil power while purporting to maintain for itself a discipline which assumes the creation and permanence of a vinculum matrimonii made by the valid exchange of consent by competent parties - and consummated - whether that exchange be made in church before the priest and congregation or in the office of the civil registrar. The Archbishop's new Commission on the Christian Doctrine of Marriage has an unenviable task before it, and no one can yet predict the direction in which its thinking will move. There

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23. Canon XXVII; On Marriage in the Church; enacted by the Twenty-third session of the General Synod of the Anglican Church of Canada, Ottawa, Ontario, 22 August to 31 August 1967, p.1.

24. See Putting Assunder: A Divorce Law for Contemporary Society. The Report of a Group appointed by the Archbishop of Canterbury in January 1964. (London, 1966.)

is one consolation: contraception came off the agenda with the Lambeth Conference of 1958, a decision which was only the more strongly confirmed when challenged by the publication of Humanae Vitae ten years afterwards.<sup>25</sup>

III

MARRIAGE: CONTRACT, SACRAMENT or COVENANT

20. Words are more important than the casual user imagines them to be. In the terminology of marriage, recovered theological understanding is drawing the Churches together. The documents of Vatican II have substituted the word covenant, foedus, for contract, and this is to be welcomed. The roots of the "contract" usage were in philology, not in theology. The partes contrahentes, those "drawing together", in matrimony, became the contracting parties - and the partes contracti the parties contracted: the pledge or deed of their betrothal became their contract. But it was a contract to marry, not a marriage contract, and instances abound in literature<sup>26</sup> and in law of persons contracted, or betrothed, but never joined in wedlock. In English law, and in Anglican theology, "marriage is the fulfilment of the contract, which is then satisfied and ended, and there is no further contract."<sup>27</sup> Marriage is thence a status, not a contractual relationship; hence in liturgical usage the phrase "this holy estate". The relation of the parties to one another is more aptly understood, as will be seen, in terms of "covenant" than of "contract".
21. From the use of sacramental terminology in marriage it will be harder for the Roman Catholic Church to withdraw, because the usage has conciliar status.<sup>28</sup> Nevertheless its usage is subject to increasing theological scrutiny, reflecting some unease at the constraints which it imposes.<sup>29</sup> Here the contemporary Church of England (influenced more than many of its people recognise or would care to admit by the Catholic revival of the nineteenth century) is nearer to old-fashioned Roman Catholicism in popular language and usage than in formal theological expression. The clergy and ecclesiastically articulate lay people readily, frequently and unthinkingly

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25. See The Family in Contemporary Society: The Report of a Group convened at the behest of the Archbishop of Canterbury. (London, 1958.) The Lambeth Conference 1958, Resolutions and Reports (London, 1958), esp. Resolution 115. The Lambeth Conference 1968: Resolutions and Reports (London, 1968), esp. Resolution 22.

26. e.g. "Time trots hard with a young maid between the contract of her marriage and the day it is solemnized". As You Like It, III.ii.332.

27. Brett, J., in Mordaunt v Mordaunt (1874) (43 L.J.P. & M. 53). cf. G.R. Dunstan, The Marriage Covenant, 1961.

28. Conc. Trid., Sess. VII, can. 1.

29. cf. Philippe Delhaye, "The Development of the Medieval Church's Teaching on Marriage", Concilium, loc. cit., p. 85f.

employ "sacramental" language about marriage;<sup>30</sup> clergymen given to expressing theological distinctions symbolically in their choice of vesture wear a white stole for the solemnising of holy matrimony as for holy baptism, and not the black scarf and academic hood worn for the choir offices of mattins and evensong. Striving faithfully to reconcile this usage with their formal and proper theology of marriage, they will say that the bride and bridegroom are themselves "the ministers of the sacrament", though when they are pressed to reconcile this language with the formal definition of a sacrament stated in the Catechism in the Book of Common Prayer, definition fades. This is understandable, for the Catechism by implication, and the XXXIX Articles of the Christian Religion - the other relevant formulary - by express word, formally exclude Holy Matrimony from the number of the dominical sacraments, which are held to be two and not seven. This, however, need present no difficulty, for it can be demonstrated that all that Catholic usage seeks to safeguard in the use of sacramental terminology about marriage is embodied, and perhaps with less ingenuity, in the Anglican use of covenant terminology.

22. In insisting at the Reformation that there are but two "sacraments of the Gospel" the Church of England did not intend in any way to disvalue marriage; on the contrary it sought to raise its status, and so built clause after clause into the opening discourse of the new marriage liturgy to proclaim marriage as "an honourable estate", validated as such by its institution "by God himself in the time of man's innocency" and by the presence of Christ, and the first miracle that he wrought, at the marriage at Cana in Galilee. Marriage was excluded from the list of sacraments (leaving aside historical and polemical considerations) first because it stood in the order of creation - it is proper to man in nature, in his "secularity" as the now current jargon would express it - and secondly because it had no visible sign given to it by Christ.

23. Once again we must seek reconciliation in philology. The sacramental interpretation of marriage stems from the Vulgate translation of Ephesians 5: 22: to musterion touto mega estin; sacramentum hoc magnum est. In the context (Eph. 5:21 - 6:9) the author of the Epistle uses an accepted doctrine of a union or unbreakable bond between Christ and the Church in order to exemplify a pattern of teaching about marriage; he uses also, in a circular exposition, an accepted doctrine of a union or unbreakable bond between husband and wife to exemplify a certain pattern of teaching about the union of Christ and the Church. This he can do because of the nuptial imagery already developed, in the Old Testament to symbolize the covenant-union between Yahweh and Israel, and in the New Testament to symbolize the covenant-union of Christ and the Church. Christ has revealed, in the Incarnation, what was hitherto hidden and obscure (though dimly seen and in part declared - Hebrews 1:1ff), namely the unbreakable union of God and man: and the vocation of the married is to make this great "mystery" manifest in every generation. Similarly, the union of God with man in Christ has revealed or brought to light the true nature of marriage, hitherto also obscure, though dimly perceived and in part declared: and the vocation of the married is to love one another into that perfection into which Christ also purposes

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30. This usage is reflected in the Revised Catechism approved by the Convocations in 1962; after the restatement, in S.38, of the two sacraments appointed by Christ "in the Gospel" "for his Church", S.39 puts "Holy Matrimony" among "other sacramental ministries of grace", an example of the new imprecise language of compromise which is replacing the old comprehension of clearly recognized extremes in the Church of England. Another instance occurs at the end of the list, where "the ministry of healing" is intended to satisfy both those who would accept Holy Unction and those who

to bring the Church.<sup>31</sup> The Anglican liturgies therefore speak of marriage as a covenant; and the sacrament and covenant traditions both stem from this passage in Ephesians which is entrenched in the Anglican marriage rite as in many others, Catholic, Orthodox, Protestant and Reformed.. It seems of first importance to the present writer that in the current fashion for the reduction of liturgies to the plainest, most unimaginative (and therefore symbolically useless) forms of words, these recollections of the Ephesians passage be not obliterated.

24. In so far as the word sacramental is used to imply indestructible, indissoluble, this derives partly from the element of moral affirmation built into the word. The Latin word sacramentum has, as one of its meanings, "indissoluble obligation", "religious commitment", "oath"; it was used for the soldiers' oath to the Emperor in Tertullian's time; it was used regularly in medieval England for the oath tendered by bishops, on the command of the King, to sheriffs and other royal officials on their entry into office. So the Anglican liturgy speaks in one phrase of "the vow and covenant betwixt them made", and takes the exchange of vows, made in words (per verba de praesenti) and visibly demonstrated by the joining of hands and the giving and receiving of a ring, as constituting the marriage; the priest's function is to declare the parties, having so vowed, "to be man and wife together", and to add at once the blessing of God mediated in the body of Christ, the Church. The element of indestructibility derives also, and more, from the covenant analogy itself. In relation to the "spiritual marriage or union that is betwixt Christ and his Church", marriage is a sacrament in another sense of the word; it is a sign or symbol: the vocation of the married is to exhibit a sign or symbol of the irrevocability, as well as of the reality and purpose, of Christ's covenant with the Church. Unfaithfulness in marriage is, therefore, in theological terms, unfaithfulness not only to the partner but also to Christ and the Church, to the ground of the Church's faith, which is God become man. (It is, of course, like everything else, forgivable).

An understanding of this sort would lead the present writer - and here, in contrast to what he has written above in reliance upon the Church's liturgy and formularies, he speaks for no one but himself - to ground the so-called "indissolubility" of marriage, not upon a supposed metaphysical vinculum which is alleged to persist even when all empirical features of marital union have ceased to be discerned, but upon a vocation to witness to these covenantal truths of the Christian faith. A "breakdown" of marriage might then be treated as a failure of witness - with or without fault; a separation or divorce would be, each in its own degree, an abandonment or rejection of the vocation to witness. Such terminology would bring the question of divorce, the communicant status of the divorced, and even the remarriage of the divorced, within the possibility of assessment in moral and pastoral terms; it would bring to them the proper and principled flexibility of considerations attending the dissolution of or dispensation from a vow, in place of the impassable barrier erected by the terminology of the vinculum - an impassability demonstrated by centuries

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31. The theme is expounded more fully, with reference to both Testaments, in G.R. Dunstan, The Marriage Covenant, 1961.

of canonical and juridical ingenuity with the language and loopholes of "nullification". This, I repeat, is a personal opinion; the formal position of the Church of England, and its present problem, over divorce and re-marriage have been stated earlier in this paper.

26.

One further difference between the two Churches must be noticed, namely the function which we attribute to the officiating priest in relation to the validity of marriages. Here, in strict theology, there is no difference; the attribution of theological significance, however, to what was in origin a matter of canonical discipline has created not only difference but also a matter of substantial difficulty in the contracting of "mixed marriages". The Tametsi decree of the Council of Trent (Sess. XXIV, cap. 1), dating from 1563, required the presence of the parish priest, or of his or the Ordinary's deputy, as necessary to the validity of the marriage: without this, the parties were declared incapable of contracting marriage, and their contract was invalid and null. The intention was to remedy the long-standing abuses of clandestinity, which bishops had for long tried to curb by regulation. In 1455, for instance - little more than a century before the Tametsi decree - Archbishop Thomas Bourghier of Canterbury issued a monition requiring the making of wills in proper form, before two or three witnesses, one of whom must be the parish priest; it added, pari consideracione, that marriages must also be contracted before two or more witnesses, but without mention of the parish priest or any other; and the reason given for the two requirements was the same, that the fact, whether of the will or of the marriage, could be established and proved should it ever be brought into question.<sup>32</sup>

27.

At the Reformation the Church of England continued the old canonical jurisdiction, as it continued the theological understanding, concerning marriage. Abuses arising from clandestinity here were remedied partly by Canon 62 of 1603 and finally by Lord Hardwicke's Act in 1753, an Act which, however, purported to be no more than a civil regulation, not touching the theological aspect of marriage, and not impugning the validity of marriages contracted outside the English civil jurisdiction or even within it according to forms recognized by law. It seems to the present writer that, until the Tametsi decree of Trent - or the Ne Temere by which it was, after three and a half centuries, promulgated universally - can be rescinded, the only means by which canonical requirement can be brought back into conformity with theological truth is by an interpretation of the words of the decree, "or [in the presence] of some other priest by permission of the said parish priest, or of the Ordinary", which would permit the Roman Catholic partner to marry before the minister of the Church of the other partner, should the partners themselves, for good reason, deem this expedient. It would seem that such action would be possible, if the local Episcopal Conferences would so determine, within the terms of the motu proprio published from Rome on 31 March, 1970.

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32. Registrum Thome Bourghier Cantuariensis Archiepiscopi, ed. F.R.H. Du Boulay, 1957; p. 23.

IV

ON THE ENDS AND PROPERTIES OF MARRIAGE

28. The phrase (de finibus et proprietatibus matrimonii) occurs in the recent motu proprio on mixed marriages, so it would seem that consideration ought to be given to it. Lex orandi: lex credendi: the words of the marriage liturgy express its formal doctrine. The introductory address in the rite of 1662 (which is still the strictly statutory rite) contains a statement of "the causes for which Matrimony was ordained":

First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of his holy name.

Secondly, It was ordained for a remedy against sin, and to avoid fornication; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity."

The Revised Service of 1928, which has never received statutory authority, but has become more widely used than the older form, restated the causes thus:

"First, It was ordained for the increase of mankind according to the will of God, and that children might be brought up in the fear and nurture of the Lord, and to the praise of his holy name.

Secondly, It was ordained in order that the natural instincts and affections, implanted by God, should be hallowed and directed aright; and those who are called of God to this holy estate, should continue therein in pureness of living.

Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity."

Both forms preserve the traditional order, proles, fides, sacramentum, as the ends and properties of marriage.

29. Whether these purposes were set out thus in a chosen logical order, giving such logical priority to the first as to make the second and third dependant on it, or whether the order was merely didactic, without strict logical significance, is an historical question now without practical interest. It is significant that in the Elizabethan Homilies published in 1571 - which also had the status of a formulary, being issued by authority to be read in churches by ministers who were not licensed preachers - the Homily on Matrimony anticipated present-day theological and psychological understanding by four hundred years. Matrimony, it said,

"is instituted of God, to the intent that man and woman should live lawfully in a perpetual friendly fellowship, to bring forth fruit, and to avoid Fornication."

In this formulation, the establishment of the common life, the koinonia, la communauté conjugale, comes first; within this - as in a necessary environment - children are begotten and nurtured, and nature is re-ordered by grace. It is unlikely that in any new Order for the Solemnization of Matrimony the language of "causes" or "ends" would be used with such precision. A new introduction might speak of the marks or characteristic activities of marriage; these three "ends" would be incorporated among them; the procreative end would almost certainly be set within the unitive end, and not set over against it, or apart from it, or given logical priority to it. The new understanding of marriage wrought out in the contraception debate would, at all events, assure this.

30. That the characteristic act of marital union has a unitive end as well as a procreative end is common ground in the theology of both Churches: Casti Connubii (in para. 24) recognized this for the Church of Rome in 1930, and the formal teaching on the selection of the infertile periods as a means of regulating births, given authoritatively by Pope Pius XII in Vegliare con Sollecitudine in 1951, was grounded upon it. For the Churches of the Anglican Communion it underlay the theological validation of the liceity of contraception in Resolution 115 of the Lambeth Conference of 1958. The Resolution read as follows:

115. The Conference believes that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere: that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience, is a right and important factor in Christian family life and should be the result of positive choice before God. Such responsible parenthood, built on obedience to all the duties of marriage, requires a wise stewardship of the resources and abilities of the family as well as a thoughtful consideration of the varying population needs and problems of society and the claims of future generations.

The theological argument had been developed (as described in my former paper) in the preparatory Report, entitled The Family in Contemporary Society, and re-worked by the Bishops in Committee 5 of the Conference. The Conference of 1968, which was its session when Humanae Vitae was published, replied in Resolution 22, taking note of the Pope's letter and evident concern, but re-affirming the Resolutions of 1958.

31. It is to be observed that, according to Anglican moral theology, sexual union has these two ends - the deepening of the marital relationship, the common life, between the spouses, and the procreation of children. Sexual union is not an end in itself: the mere pleasure of it, exquisite as this can be, is not to be sought for itself alone, without reference to the promoting of relationship, a unity of persons, between the spouses. Once this consideration is clearly perceived in relation to the consummation of sexual expression in marriage, it becomes a governing consideration also for the inter-personal relations of men and women as such, in their infinite gradations, outside of marriage. Since, by God's ordinance, mankind is made of man and woman, fitted or apt for relationship between them, to ignore gender is theologically unacceptable; to reject the complementarity, not of skills only but of very



being, is to refuse the humanity which is God's gift.<sup>33</sup>

37 The complementarity of man and woman expresses itself in way, gestures, rituals, courtesies, dress, developed by society (and differing in different societies) which observe the proprieties and prudential limits required by the fundamental respect due to persons in themselves and to their social relationships in general, but which are, nevertheless, manifestations of sexuality, of gender. Because the complementarity is fundamentally a sexual complementarity, there is a mode of sexual expression and satisfaction not far beneath the surface - and sometimes on the surface - of them all. As such it is to be enjoyed - provided that it is serving the relationship, proper in degree to the circumstances in which the man and woman stand together. The nature of the relationship determines the manner of the expression. Thus there is one mode or expression of sexuality proper to marriage, which is the consummation in full physical union; a consummation which is also apt for or directed towards procreation; with children as its natural consequence, only a marital unity provides the environment into which with justice they may be born. There is another expression proper to betrothal as the time of final approach, preparation and accommodation to the fuller union. There are others proper to friendship, to partnership together in work, leisure, music, drama, ballet, art, service of the needy or the sick, liturgy, the activities of the intellect and mind. Monks and nuns are manifestly able to create, sustain and fruitfully to enjoy this complementarity together even when, by profession and spiritual discipline, the erotic imagination (and erotic is used in no pejorative sense in this essay) is most strictly under guard. To enjoy this complementarity, in whatever mode of expression is proper to a given relationship between man and woman, is to live as God ordained in creation - provided that the enjoyment is integral to the relationship and is subordinate to the general obligation of charity which is to serve the other's good. That good, in this instance, is to help the other towards that ripening of character and relationship to which all are called in Christ. Sin may disorder or adulterate it, as when a merely lustful or lascivious gaze sees in the other not a person in a relationship but a mere stimulus to a motor sensory reaction; but grace can continually order it, make it ordinate to each person's status and calling. In such ways - if the insight expressed here be true, and the argument properly displayed - human sexuality may be theologically affirmed, in a progression of thought which looks outward from marriage - from the covenanted union - upon men and women in their humanity; not in a progression which begins with the amoeba or some other sub-human level of biological life and may, with luck and some logical ingenuity, achieve marriage, for some, in the end. Whatever the demerits of this presentation, at least it avoids the common pitfall of separating humanity in a new divide, the married and the unmarried, with a qualified affirmation of sex for the one and a regretful negation for the other.

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33. This is not to exclude the liceity or the value of seclusion, or of religious orders, as a vocation to holiness; their theological validation is subordinate, and not contrary, to the general theology of man in creation as stated.

CONCLUSION

33. It is hoped that within these two papers the major questions which prompted the exercise have been touched upon without too much repetition. The major treatment of the theology of marriage and sexuality has fallen into this second paper. Divorce was treated in the first paper, in paragraphs 8 and 9, and in the second paper in paragraphs 11 to 19. For contraception, the moral reasoning was given in the first paper, paragraphs 11 to 12 and 20 to 22, and the Resolutions of the most recent Lambeth Conferences are quoted in the second paper, paragraph 30. In the first paper also are treated homosexuality, paragraph 7, artificial insemination by donor, paragraph 7, and abortion, paragraph 10. The theological and moral reasoning involved, and the working out of relevant public policy and pastoral practice, are activities in which clergymen and lay persons, men and women, participate together.

34. In pastoral practice, at the parochial level the centre of initiative is still generally the parish priest. He is responsible for the general moral training of his people, within the context of normal Christian teaching. In particular he is responsible for the preparation of couples for marriage, though in the towns and cities he may well have lay assistance in this, sometimes organized parochially, sometimes in collaboration with the local Marriage Guidance Council. Similarly, in helping parishioners whose marriages are under strain, he may well invite specialist help, professional through the health and social services, non-professional through the Marriage Guidance Council. The Church of England has not established an agency for marriage guidance of its own, as the Roman Catholic Church (so beneficially) has. The decision not to do so was deliberate, not casually taken: the sense of "establishment", of being the Church of the nation, was so pervasive when the marriage guidance movement was beginning, a quarter of a century ago, that most of the mature and responsible lay men and women who were beginning to work with the National Marriage Guidance Council would have felt it to be an improper division of loyalties had the Church called them out to staff a similar agency of its own. The test of that decision - which has never seriously been called in question - lies in the extent to which more Christian influence has been brought to bear upon the national movement, to which those in need have found help mediated through people of mature Christian character, and to which the clergy have gained enough confidence in their local Councils to be willing to seek help for their people from them.

35. Behind the parish priest stands his Bishop. The Bishop has, of course, a jurisdiction which he may or even must exercise when occasion so demands, in circumstances and in a manner prescribed by law. In general, however, his oversight is primarily pastoral, exercised more by advice given to a responsible and largely autonomous local person - the parish priest - than by command or direction handed down to a subordinate or delegate. Even in cases like the re-marriage in church of divorced persons, or the admission to communion of persons re-married after civil divorce, the Bishop may expect to be consulted, and he may advise; he may not command. In the first instance the parish priest has a discretion allowed him by the law, by statute - whether so to re-marry divorced persons, or allow them to be re-married, in his parish church or not; and though the Bishop may remind him of the moral weight of the Resolutions of Convocation which

advise him to use that discretion negatively, he may not take that discretion away, nor censure him formally for any lawful exercise of it. As to admission to communion in the circumstances stated, neither the Bishop nor the priest may repel; they may not even lawfully forbid reception on the ground of the divorce and re-marriage alone, for they may not bring within the rubrical stricture of "an open and notorious evil liver" one who has embraced a state of life provided for by the Law. In practice, good sense, good manners and common courtesy prevail, for these are virtually the only effective power in an age and Church from which coercive authority in matters spiritual has gone. Life in the contemporary Church, like life in contemporary marriage, is indeed life within a covenant, and that not of Sinai.

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